

MEMORANDUM FOR RECORD

SUBJECT: National Environmental Policy Act/Plan Formulation Workshop

1. On 14 September 2004, Seattle District hosted a workshop on the interfacing of the National Environmental Policy Act (NEPA) and Plan Formulation. The workshop was held between the hours of 1000 and 1515. Gary Bunn and Dave Ponganis presented the first topic titled "Overview of Planning and the National Environmental Policy Act." Craig Juckniess presented the second topic titled "NEPA Legal Review and Potential Drafting Pitfalls." After this Bob Willis, George Hart, and Dave Ponganis all gave presentations on different case studies. This memorandum will focus primarily on questions that were brought up during the workshop, the answers to the questions, and take away points that were raised throughout the workshop. A list of issues and concerns that are to be addressed later, also called a parking lot list, was kept at the workshop and is recorded in this document.

2. Overview of Planning and the National Environmental Policy Act

Q: What are some categorical exclusions for NEPA?

A: Appropriation of funds, real estate actions, and maintenance dredging.

Q: Is the following statement true? If you do a poor job on the planning process for a project, Headquarters does not approve it but if you do a poor job with the NEPA process then the project could go to court

A: Yes

Q: When should a person integrate NEPA and feasibility reports?

A: A person may want to integrate reports if it is not a large, controversial, etc. project. If it is a larger document then they may not want to integrate.

Q: Why would the checks and balances be jeopardized if the feasibility report and the NEPA document were integrated?

A: Because the project manager wants to do whatever they can to satisfy the sponsor while the environmental coordinator is trying to come up with the best environmental solution for the project and still satisfy the sponsor. This could lead the environmental coordinator to start leaving some options out because the sponsor does not want to consider it.

Q: What would be a good example of an appropriation request?

A: Any federal action where there is an appropriation of funds. Just talking about appropriating funds does not constitute as an action.

Q: How should someone address cumulative impacts?

A: The more detailed a team can be with the cumulative impacts in the NEPA process the better off they are.

Q: Is there going to be a document or a model program from the Regulatory Branch that can be distributed to other Branches, such as Planning?

A: The model that Regulatory Branch has at the moment is only set up for a specific project but they may be able to put something together that is not so specific.

Q: What would be a reasonable foreseeable action?

A: This is very speculative and needs to be defined by you with coordination with others. One suggestion would be to search for formal proposals for permits. This information can be found at the county planning department and on the Department of Ecology's website under SEPA (State Environmental Policy Act) applications.

Q: If the team does not have a preferred alternative then do all of the alternatives need to be analyzed?

A: Yes.

Comments

- The NEPA process and the Corps' 6 step planning process are nearly the same.
- The NEPA process starts at the same time as the planning process for the project.
- NEPA puts the environmental impacts of a project on the same level as the economic impacts.
- Teams need to make sure they receive feedback from both the planner and the environmental coordinator for the project.

3. NEPA Legal Review and Potential Drafting Pitfalls

Q: Do all comments for an Environmental Assessment (EA) need to be addressed in the final EA?

A: All comments to an EA need to be published but do not need to be addressed in the final EA. EAs do not necessarily have to go out for public review, only to the agencies.

Q: What kind of level of effort needs to go into the alternatives?

A: First whittle down the alternatives that are to be fully evaluated to a manageable number, and then fully evaluate those. This way if the team changes their minds about which alternative they use at a later time they only have to change the Record of Decision (ROD) and do not need to worry about the EIS. Make sure that the team's decision-making process is documented in some fashion for the NEPA process.

Q: Should a team keep their analysis for all of their alternatives at the 10% design phase even though one alternative is at the 35% design phase?

A: The intent of the NEPA process is to look at each alternative with equal intensity.

Q: What is the difference between tiering and supplemental documents?

A: A programmatic EIS, if it is done narrowly, does not serve as a compliance document for a conservation activity and will always be followed up with a decision EIS or EA. The point of doing a programmatic EIS is that it allows a

group to commonly discuss the effects of alternatives, which facilitates planning for future actions when they become ripe for discussion.

Q: Can one federal agency write a supplemental (or programmatic) EIS for another federal agency's EIS?

A: Yes.

Q: When a change is made to a project is it better to issue a new ROD or replace or change the existing ROD?

A: It is better to replace the existing ROD.

Comments:

- A supplemental EIS may be triggered if new information becomes available before the project is completed.

4. Case Studies

A. Bob Willis, Portland District, Caspian Tern Relocation

Q: Should an EIS be written for everything that a team does?

A: Depends on what is done, if the team is going to be making a major change environmentally, then probably.

Q: How did you consider the indirect affects of this project?

A: We did not consider the indirect affects for this project in the EA.

Q: How did you measure the controversy associated with this project?

A: When you go out with the draft EA you can get a feel for the level of controversy, but otherwise it is subjective.

Q: How did you manage the coordination with agencies that are outside of the Portland district?

A: We invited them to meetings; otherwise it was just like a normal coordination.

Take away points

- ESA does not trump NEPA.
- Need to handle administrative records carefully.
- Don't tell too much in the NEPA document. For example in this project the team mentioned that the movement of a colony of Caspian Terns this size had never been done before.

B. Bob Willis, Portland District, Columbia River Navigation Channel

Take away points

- Staff changes don't work very well for completing a project.
- Engage the management within the resource agencies.
- Use the best available science.
- Bringing in an independent reviewer could be worthwhile for controversial issues.
- Keep good administrative records on everything you do.

- Look at each issue of the project that team members are having problems with and put it to bed right away.
- Try not to be too rushed on the deadlines.

C. George Hart, Seattle District, Centralia Flood Damage Reduction Study

Q: Why wasn't a Supplemental EIS done when it was discovered that the restoration projects would not be included?

A: The team was not challenged on this to the point of needing to do a Supplemental EIS by the other agencies.

Q: Under the authority that you just read it sounds like the Corps pays for the flood control but the restoration is cost shared, is this correct?

A: Both aspects have to be cost shared separately, but in this case the sponsor has no money for the restoration part of the project. This time we do not have to do a supplemental EIS because the PMP for this project said that it was potential restoration.

Q: Do you think the regulating agencies bought off on the project more readily when the restoration aspect was being considered?

A: Yes.

Q: If an area has not flooded in ten years, can the Corps still do a flood reduction project in that area?

A: Yes.

Take away points

- Good communication between all members of the team is crucial.
- Team members need to stay for the entire length of team meetings or good memorandum for records from those meetings need to be distributed to all of the Project Delivery Team.
- Establish communication pathways at the beginning of the project. Make sure you are getting the information that you need to be able to do your job correctly.
- Always ask the sponsor where they are receiving their funding from and if there are any strings attached to that funding. The sponsor for this project led the Corps to believe that they had the funding to do restoration. What helped the Corps is that the administrative record shows the Corps always referred to the restoration as potential.
- Make sure that everyone on your team; sponsors, resource agencies, etc., know Corps regulations.
- Try to resist artificial timelines. The team needs to be able to set their own timelines based on the project, not on political timeframes. If this project had been able to go at its own pace it might have been completed sooner.

D. Dave Ponganis, Northwest Division, Various Case Study Lessons Learned.

Q: Why are other federal agencies reluctant to be Cooperating Agencies?

A: Agencies such as National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the Department of Ecology have departments that regulate certain aspects of an EIS. These agencies may feel that they are giving up some of their right to comment on the EIS if they are Cooperating Agencies. However, even if an agency is a Cooperating Agency they do not give up their right to comment on the document.

Take away points

- NEPA is procedural.
- Need to have a good range of alternatives for the project.
- Stay focused on the issues.
- Make sure and tell the full story of the project.
- Evaluate and accept the risks. Make sure the risks are effectively and clearly communicated to the project manager or the commander, and do this as soon as possible. There will always be some risk involved with a project; it is best to be comfortable with them from the beginning.
- Legal advice will make just about anyone nervous, but this advice will need to be worked through.

5. Parking-Lot List

A. Cumulative Impacts

- Share Examples
- Office of Counsels guidance list
- Local Planning Departments
- State Environmental Policy Act applications data base

B. The list of projects that normally require an EIS, under Corps regulations

C. Equal consideration of impact when the design level is not equal. Example, when one alternative is at the 35% design and the rest are at 10% design.

D. How this process works with Emergency Managements' PL-84-99 projects.

E. Managing specific expectations of sponsors and others.

F. Internal and external Communication aspects.

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